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DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
JOSHUA H. LERNER (SBN 220755)
jlerner@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
ZACHARY G. F. ABRAHAMSON (SBN 310951)
zabrahamson@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23

**DECLARATION OF ZACHARY G. F.
ABRAHAMSON IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S EX
PARTE APPLICATION FOR AN ORDER
TO COMPEL ATTENDANCE OF
THEODORE KRAMER**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

CIV533328
DIS
Declaration in Support
1858011



FILED
SAN MATEO COUNTY

JUN 03 2019

~~Clerk of the Superior Court~~

~~DEPUTY CLERK~~

1 I, Zachary G. F. Abrahamson, hereby declare as follow:

2 1. I am an attorney at law licensed to practice in the State of California. I am counsel of
3 record in this matter for Defendant Facebook, Inc. ("Facebook"). I make this Declaration from personal
4 knowledge, and if called to testify, I could and would testify competently thereto.

5 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Declaration of Edward
6 Vincent King, Jr. filed in this matter on January 8, 2019.

7 3. Attached hereto as **Exhibit 2** is a true and correct copy of the Order and Notice of Hearing
8 Concerning Matters Subject to this Court's Sealing and Protective Orders and Order issued November
9 20, 2018 issued in this matter on November 27, 2018.

10 4. Attached hereto as **Exhibit 3** is a true and correct copy of the Order and Notice of Hearing
11 No. 2 issued in this matter on December 5, 2018.

12 5. Attached hereto as **Exhibit 4** is a true and correct copy of the Case Management Order
13 No. 18 issued in this matter on February 1, 2019.

14 6. I provided notice of this ex parte application by e-mailing Theodore Kramer, agent for
15 service for plaintiff Six4Three, LLC, on Monday, June 3, 2019. That e-mail copied the Court and Jack
16 Russo, counsel for Mr. Kramer. My e-mail stated with specificity the nature of the relief to be requested
17 and informed Mr. Kramer that Facebook sought no hearing on this ex parte application.

18 I declare under the penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed on this 3rd day of June 2019, in San Francisco, California.

20
21 
22 ZACHARY G. F. ABRAHAMSON

PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On June 3, 2019, I served the following documents in the manner described below:

**DECLARATION OF ZACHARY G. F. ABRAHAMSON IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR AN ORDER
TO COMPEL ATTENDANCE OF THEODORE KRAMER**

- ☒ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.
- ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from cortega@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

VIA MESSENGER SERVICE & EMAIL

Theodore Kramer
1267 Chestnut St., Apt. 6
San Francisco, CA 94109
ted@six4three.com

Agent for Service of Process for Six4Three, LLC

VIA EMAIL ONLY

Stuart G. Gross
GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
sgross@grosskleinlaw.com

VIA EMAIL ONLY

David S. Godkin
James Kruzer
BIRNBAUM & GODKIN, LLP
280 Summer Street
Boston, MA 02210
godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

VIA EMAIL ONLY

Jack Russo
Christopher Sargent
ComputerLaw Group, LLP
401 Florence Street
Palo Alto, CA 94301
jrusso@computerlaw.com
csargent@computerlaw.com
ecf@computerlaw.com

*Attorney for Theodore Kramer and Thomas
Scaramellino (individual capacities)*

VIA EMAIL ONLY

James A. Murphy
James A. Lassart
Thomas P Mazzucco
Joseph Leveroni
Murphy Pearson Bradley & Feeney
88 Kearny St, 10th Floor
San Francisco, CA 94108
JMurphy@MPBF.com
jlassart@mpbf.com
TMazzucco@MPBF.com
JLeveroni@MPBF.com

Attorney for Birnbaum & Godkin, LLP

1 **VIA EMAIL ONLY**

2 Donald P. Sullivan
3 Wilson Elser
4 525 Market Street, 17th Floor
5 San Francisco, CA 94105
6 donald.sullivan@wilsonelser.com
7 Joyce.Vialpando@wilsonelser.com
8 Dea.Palumbo@wilsonelser.com

9 *Attorney for Gross & Klein LLP*

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct. Executed on June 3, 2019, at San Francisco, California.

12 
13 _____
14 Christina Ortega

EXHIBIT 1

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

Six4Three, a Delaware limited liability
company,

Plaintiff;

v.

Facebook, Inc., a Delaware corporation;
Mark Zuckerberg, an individual;
Christopher Cox, an individual; **Javier**
Olivan, an individual; **Samuel Lessin**, an
individual; **Michael Vernal**, an individual;
Ilya Sukhar, an individual; and **Does 1–50**,
inclusive,

Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V.
Raymond Swope, Dep't 23

**DECLARATION OF EDWARD VINCENT KING,
JR.**

1 1. I am Edward Vincent King, Jr.; I am a member of the State Bar of California and
2 have been in good standing for nearing forty years. I am a founding partner of King & Kelleher,
3 LLP, a law firm with offices in San Francisco. A true and correct copy of my resume is attached
4 as **Exhibit A**.

5 2. I have been asked to consider taking on the representation of Six4Three, LLC, a
6 Delaware limited liability company (the "Company") in its role as Plaintiff in the case entitled
7 Six4Three, LLC v. Facebook, Inc. et al. currently pending in the complex department of San
8 Mateo Superior Court. This office cannot and will not undertake this proposed representation
9 absent a complete and comprehensive understanding of the underlying facts and law for the
10 claim, and a complete understanding of the posture of the case to date. No competent lawyer I
11 know would begin to represent a client in this very complex and contentious litigation absent that
12 full understanding.

13 3. I understand that the case has been in the complex department for a number of
14 years. My examination of the docket sheet to date demonstrates to me that it represents a
15 substantial litigation with both sides having filed collectively over seven-hundred (700) docket
16 entries to date in the San Mateo Superior Court, as well as a number of additional docket entries
17 in the District Court of Appeal.

18 4. I also understand that there has been at least eleven (11) days of deposition of at
19 least 300 to 350 pages per day.

20 5. I further understand that there has been over a dozen hearings before the Court on
21 various matters, each of which have been transcribed, likely constituted another large volume of
22 pages to be read and reviewed.

23 6. I understand that the case is currently stayed (except for certain matters pertaining
24 to the Protective Order) and that the stay exists because of certain appeals and cross-appeals
25 pending in the District Court of Appeal on various anti-SLAPP motions heard and decided by the
26 Superior Court.

27 7. I further understand that Plaintiff's existing counsel (in Boston) and Plaintiff's
28 local counsel (in San Francisco) are seeking an immediate withdrawal from representation of

1 Plaintiff in connection with these Protective Order proceedings. I have no opinion as to that
2 matter other than that neither me nor my firm would be able to represent Plaintiff in those
3 proceedings or in the various threatened sanctions motions without having adequate time (three
4 to four months) to get up to speed for the representation of Plaintiff in this case.

5 8. I believe that my estimates are reasonable and that no competent and experienced
6 litigation counsel would undertake representation in a complex case of this type without getting
7 adequate time from the Court to prepare and fully understand the case. Additionally, the three to
8 four month estimate itself assumes a degree of cooperation with former counsel for Plaintiff,
9 which cooperation, I understand, may not (and may never) be available.

10 9. Based on my four decades of work as a civil litigator in complex cases and from
11 my preliminary review of the docket sheet and several docket entries, it is my best judgment that
12 proper review, understanding, and appreciation of the factual and legal issues in this matter will
13 require at least two-hundred (200) person hours over a three to four month period to get up to
14 speed to determine whether to undertake representing the Plaintiff in this case in the Superior
15 Court following the lifting of the stay.

16 10. I do not see any reasonable way competent counsel could get up to speed faster,
17 nor do I see how any competent counsel would proceed on any schedule which did not delay the
18 various sanctions motions which I understand that Defendant is seeking.

19 11. I am informed that for the last ten (10) days neither Plaintiff's principal counsel
20 nor its local counsel have returned any of the client's phone calls or emails and that they have
21 both effectively already withdrawn or abandoned representation of Plaintiff in this case.

22 12. Nothing in this declaration should be understood as representing a commitment
23 by me or my firm to undertake the case. This declaration is provided solely for the benefit of the
24 Court to understand reasonable time frames necessary for allowing any competent and
25 experienced litigation firm to substitute into this case after over three-and-a-half years of
26 ongoing litigation.

27 13. I will make myself available to the Court to answer any questions regarding the
28 foregoing.

14. I confirm that I have received no monetary amount from Plaintiff or anyone associated with Plaintiff in connection with providing this declaration, and it represents my best estimates of what would be reasonable under the circumstances presented as I understand them.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was entered into on January 8, 2019 in San Francisco, California.

Edward Vincent King, Jr.
Edward Vincent King, Jr. (Jan 6, 2019)

Edward Vincent King, Jr.

Exhibit A

Edward Vincent King, Jr.

evking@kingandkelleher.com

Telephone (415) 781-2888

Facsimile (415) 781-3011

EDUCATION

University of California, Berkeley, Bachelor of Arts, 1973

University of California, Hastings College of the Law, J.D., 1978

WORK HISTORY

1983 - present **King & Kelleher, LLP, San Francisco, CA**

The majority of work is patent litigation, but the Firm historically has included significant litigation representing plaintiffs and defendants in patent, celebrity, securities, antitrust, defamation, and copyright matters.

1982 **Stocker & Green, San Francisco, CA**
Antitrust, defamation litigation.

1980 – 1981 **Law Clerk to Hon. Richard H. Chambers**
U.S. Court of Appeals, Ninth Circuit

Law Clerk to Hon. Thomas F. Murphy
U.S. District Court, Southern District of New York

1978 – 1979 **Furth, Fahrner & Mason, San Francisco, CA**
Antitrust, defamation, and intellectual property litigation (patents, securities).

OTHER ACTIVITIES

- U.S. District Court, Northern District of California, ENE Evaluator.
- Marin County Superior Court, Arbitrator.
- Acted as an expert on sports law and ethics issues for the NCAA, Duke University, University of California, Federal and State legislators. Appeared as an expert commentator for ABC, NBC, CNN, ESPN and BBC. Commentary found in *The New York Times*, *The Wall Street Journal* and other publications.
- Lecturer on patent litigation and sports/law litigation: Temple University, University of San Francisco, University of California, Hastings College of the Law, University of California Berkeley, Florida State University, and Continuing Legal Education nationwide.


Decl of Edward V. King


Final Audit Report


2019-01-08


Created:	2019-01-08
By:	danielle russo (drusso@computerlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAArTj2f1kh_ozOgGm85pAEnvT1gQw-vV


"Decl of Edward V. King" History

-  Document created by danielle russo (drusso@computerlaw.com)
2019-01-08 - 6:01:00 PM GMT- IP address: 98.234.144.181

-  Document emailed to Edward Vincent King, Jr. (evking@kingandkelleher.com) for signature
2019-01-08 - 6:02:16 PM GMT

-  Document viewed by Edward Vincent King, Jr. (evking@kingandkelleher.com)
2019-01-08 - 6:02:57 PM GMT- IP address: 162.217.75.140

-  Document e-signed by Edward Vincent King, Jr. (evking@kingandkelleher.com)
Signature Date: 2019-01-08 - 11:02:06 PM GMT - Time Source: server- IP address: 162.217.75.140

-  Signed document emailed to Christopher Sargent (csargent@computerlaw.com), Edward Vincent King, Jr. (evking@kingandkelleher.com) and danielle russo (drusso@computerlaw.com)
2019-01-08 - 11:02:06 PM GMT



Adobe Sign

EXHIBIT 2

FILED
SAN MATEO COUNTY

NOV 27 2018

[Signature]
Clerk of the Superior Court
by *[Signature]* DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK INC., et al.

Defendants.

Case No. CIV533328

**ORDER AND NOTICE OF HEARING
CONCERNING MATTERS SUBJECT TO
THIS COURT'S SEALING AND
PROTECTIVE ORDERS AND ORDER
ISSUED NOVEMBER 20, 2018**

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Hearing Date: Friday, November 30, 2018
Hearing Time: 2:00 p.m.
Dept.: 23

Action Filed: April 10, 2015

On November 19 and 20, 2018, the Court received emails from counsel for both plaintiff SIX4THREE, LLC ("Plaintiff" or "Six4Three") and defendant FACEBOOK, INC. ("Defendant" or "Facebook") pertaining to Defendant's ex parte application for expedited briefing on a motion for sanctions and contempt ("Defendant's Ex Parte") and the imminent release of unredacted, sealed documents by Plaintiff's principal Theodore Kramer to the United Kingdom, House of Commons, Digital, Culture, Media and Sport Committee.

On November 19, 2018, the Court set a briefing schedule on Defendant's Ex Parte by email, and on November 20, 2018, the Court issued an Order for Briefing and Staying Submission of Unredacted Copies of Sealed Documents ("Order").

1 On November 21, 2018, at 6:30 a.m. and 7:33 a.m., the Court received emails from Plaintiff's
2 counsel David Godkin and on November 23, 2018, at 8:14 p.m., the Court received an email from
3 Defendant's counsel Laura E. Miller. These emails pertain to the subject matter of the Order.

4 On November 26, 2018, the Court received Plaintiff's Response to the Order at 11:35 a.m.
5 ("Plaintiff's Response"), Defendant's Ex Parte at 11:55 a.m., and Plaintiff's response to Defendant's
6 Ex Parte at 4:46 p.m.

7 On November 27, 2018 at 8:52 a.m, the Court received an email from Defendant pertaining
8 to Plaintiff's Response.

9 In his declaration in support of Plaintiff's Response, Mr. Kramer admits he produced
10 documents subject to the Sealing and Protective Orders from a DropBox account and in violation of
11 the Order. (Kramer Dec. ISO Plaintiff's Response, filed Nov. 26, 2018, ¶ 18.) Mr. Kramer admits
12 he "do[es] not recall the exact files [he] transferred" and further destroyed evidence of the transferred
13 files by deleting all documents from his DropBox account on the advice of counsel. (*Id.* at ¶¶ 18,
14 24.)

15 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED as follows:

16 All counsel of record and the parties, including Plaintiff's principal Theodore Kramer, shall
17 appear in person for hearing on Friday, November 30, 2018 at 2:00 p.m. in Department 23. No
18 telephonic appearances are permitted.

19 The parties and counsel shall be prepared to discuss the sealing and protective orders, the
20 Defendant's ex parte application and the Order issued November 20, 2018.

21 Plaintiff, its counsel, and Theodore Kramer, are ordered to not tamper, modify, delete or
22 destroy any files, folders, notes, messages, phone logs, emails, correspondence, and/or documents

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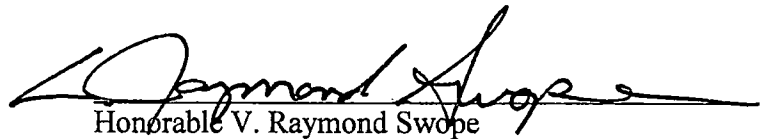
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1 related to this litigation or the Order. This order extends to those stored physically, on computer, on
2 mobile device, on server, in the cloud, on file-sharing programs or apps, or in any other physical or
3 virtual form.

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5 IT IS SO ORDERED.

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7 DATED: November 27, 2018

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10 Honorable V. Raymond Swope
11 Judge of the Superior Court
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AFFIDAVIT OF MAILING & ELECTRONIC MAILING

CASE NO. CIV533328

DOCUMENT: ORDER AND NOTICE OF HEARING CONCERNING MATTERS SUBJECT TO
THIS COURT'S SEALING AND PROTECTIVE ORDERS AND ORDERS
ISSUED NOVEMBER 20, 2018

FILED
SAN MATEO COUNTY

NOV 27 2018

Clerk of the Superior Court
By 
DEPUTY CLERK

SIX4THREE LLC,

vs.

FACEBOOK, INC. et al,

I declare under penalty of perjury that on the following date I served:

By depositing in the United States Post Office mail box at Redwood City, California a true and correct copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage prepaid thereon addressed as set forth below; and

By electronically mailing a true and correct copy of the foregoing document through San Mateo Superior Court's electronic mail system from complexcivil@sanmateocourt.org to the email addresses as set forth below.

STUART G. GROSS, ESQ
BENJAMIN H. KLEIN, ESQ
GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111

sgross@grosskleinlaw.com
bklein@grosskleinlaw.com

DAVID GODKIN, ESQ
JAMES KRUZER, ESQ
BIRNBAUM & GODKIN LLP
280 Summers Street
Boston, MA 02210

godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

JOSHUA LERNER, ESQ
SONAL MEHTA, ESQ
LAURA MILLER, ESQ
CATHERINE KIM, ESQ
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111

jlerner@durietangri.com
smehta@durietangri.com
lmiller@durietangri.com
ckim@durietangri.com
service-six4three@durietangri.com

Executed on November 27, 2018
at Redwood City, California 94063
CLERK OF THE SUPERIOR COURT

By 
Rebecca Huerta, Deputy Courtroom Clerk

EXHIBIT 3

ENDORSED FILED
SAN MATEO COUNTY

DEC 05 2018

Clerk of the Superior Court
By R. Huerta
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK INC., et al.

Defendants.

Case No. CIV533328

ORDER AND NOTICE OF HEARING
NO. 2

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Hearing Date: Friday, December 7, 2018

Hearing Time: 9:00 a.m.

Dept.: 23

Action Filed: April 10, 2015

On December 3, 2018, the Court received an email from counsel for defendant FACEBOOK, INC. ("Defendant" or "Facebook") requesting clarification of the Order Denying Defendant Facebook, Inc.'s Ex Parte Application, issued November 30, 2018, and for further orders of the Court. A true and correct copy of that letter is attached as **Exhibit A**.

On December 4, 2018, the Court responded by email to all parties regarding Defendant's letter and memorializes the instructions given and gives further instructions in this Order.

IT IS HEREBY ORDERED as follows:

Defendant shall file and electronically serve an ex parte application pertaining to the issues raised in its letter dated December 3, 2018 no later than December 5, 2018 at 11:59:59 p.m.

Plaintiff shall file and electronically serve any opposition no later than December 6 at 11:59:59 p.m.

///

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1 All counsel of record and the parties, including Plaintiff SIX4THREE LLC's ("Plaintiff" or
2 "Six4Three") principal Theodore Kramer and non-California licensed attorney Thomas
3 Scaramellino, who is a member of Six4Three's legal team and a law clerk for Plaintiff counsel David
4 S. Godkin, shall appear in person for hearing on Friday, December 7, 2018 at 9 a.m. in Department
5 23. No telephonic appearances are permitted.

6 Defendants' ex parte application will be heard with the Discovery Conference set for the
7 same date and time.

8 As this is related to the prior ex parte application heard on November 30, 2018, the matter
9 will be reported.

10
11 IT IS SO ORDERED.

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13 DATED: December 5, 2018

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15 V. RAYMOND SWOPE

16 Honorable V. Raymond Swope
17 Judge of the Superior Court
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Exhibit A

From: Celeste Alas <CAlas@durietangri.com>
Sent: Monday, December 3, 2018 12:02 PM
To: ComplexCivil
Cc: 'kruzer@birnbaumgodkin.com'; 'sgross@grosskleinlaw.com';
'godkin@birnbaumgodkin.com'; SERVICE-SIX4THREE; 'pthoreen@altshulerberzon.com'
Subject: Six4Three, LLC v. Facebook, Inc. et al, Case No. CIV 533328
Attachments: 2018.12.03 FINAL Mehta to Judge Swope re spoliation and forensics.pdf

Your Honor:

Attached please find a letter from Sonal Mehta on behalf of Defendant Facebook, Inc.

Respectfully Submitted,

Celeste Alas
Legal Secretary
Durie Tangri LLP
217 Leidesdorff Street
San Francisco, CA 94111
T (415) 362-6666
F (415) 236-6300
www.durietangri.com

Durie Tangri

Sonal N. Mehta
415-362-6666 (main)
smehta@durietangri.com

December 3, 2018

VIA EMAIL TO THE COURT AT COMPLEXCIVIL@SANMATEOCOURT.ORG

The Honorable Judge Raymond V. Swope
Superior Court of California, County of San Mateo
Department 23, Courtroom 8A
400 County Center
Redwood City, CA 94063

Re: *Six4Three, LLC v. Facebook, Inc.*
Case No. CIV 533328

Dear Judge Swope:

We apologize for having to trouble the Court again, but need to bring to Your Honor's attention a number of troubling events and disclosures that have come to light between the hearing before Your Honor on Friday afternoon and the writing of this letter on Sunday evening.

First, we have reason to believe that further evidence has been spoliated than was previously disclosed. We have been informed by Stroz Friedberg that, pursuant to the Court's November 30, 2018 Order, they attempted to access Mr. Scaramellino's Dropbox account to preserve evidence from that account. When they did so, they received a notification that the account has been deleted, and that, as a result, no data relating to the account is available. We understand that they followed up with Mr. Scaramellino (who himself is a member of the "legal team"), and he informed them that he had deleted the account "*on counsel's advice*."

It is unclear the extent to which this Dropbox account overlaps with the "Six4Three Dropbox Account" that was the subject of discussion with the Court last week or whether this is a second Dropbox Account that was not disclosed to the Court. And now that it has been deleted, it is also unclear the extent to which we will ever know what was on it. But the account was registered to "tom@six4three.com," which at least strongly suggests that the account includes material relating to this litigation and the issues presently before the Court, all of which have been under preservation orders.¹

¹ Relatedly, we have not been able to get a clear statement from Mr. Gross as to what steps he took to try to unmark the documents marked for deletion in the "Six4Three Dropbox," or when he attempted to do so.

Second, we have been informed by Stroz Friedberg that Mr. Scaramellino has declined to cooperate in the preservation of cloud-based storage systems for email because he does not view the Court's order as extending to such systems. We understand that, while Mr. Scaramellino has provided password information for his "business" Google account (which includes both Google Drive storage and his "business" Gmail account), he has told Stroz Friedberg that he does not believe they are authorized to access email in this account and may only access the documents on the Google Drive portion of this account. We also understand that Mr. Scaramellino has refused to provide password information for what he described as his "personal" Gmail account.

Likewise, although Mr. Kramer has provided his password, his counsel has failed to respond to requests that Mr. Kramer cooperate in providing the two-factor authentication (which involves a unique code sent to his mobile phone) as would be necessary to access and preserve his email. To the contrary, Mr. Gross has stated: "Our position is that the Court's order does not include within its scope the imaging of Messrs. Kramer's or Scaramellino's web-based *email* accounts. We provided the credentials of their respective Google accounts for the sole purpose of providing Stroz Friedberg access to the associated cloud storage services, which go by the name Google Drive. We are not disputing that the Court ordered that Stroz Friedberg be given access to such cloud storage services. The fact that the credentials provided for access to such Google Drive accounts also, by virtue of the way in which Google has arranged things, also can be used to access Messrs. Kramer's or Scaramellino's web-based *email* accounts does not mean that the Order provides for any imaging of the contents of those accounts."

The lack of cooperation by Messrs. Scaramellino and Kramer is inconsistent with both the text and spirit of the Court's November 30 Order. At the outset, Gmail is a "cloud-based storage system" within the terms of the Court's Order. *See, e.g.*, <https://gmail.googleblog.com/2012/11/gmail-and-drive-new-way-to-send-files.html?m=1>. Indeed, Gmail and Google Drive are integrated cloud-based systems designed to allow for the seamless storage and transmission of documents. Moreover, the available record shows that much of the relevant evidence, including communications between Six4Three and its legal team and third parties, would take the form of email including Gmail. Mr. Kramer's communications with the DCMS Committee were all via his Gmail account. Further Six4Three's privilege log and Mr. Scaramellino's deposition testimony confirm that Mr. Scaramellino's involvement in this case was via at least the following email addresses: thomas.scaramellino@gmail.com and 643litigation@birnbaumgodkin.com.

Third, last week Mr. Gross advised the Court that the contents of the Six4Three Dropbox account had been copied to a separate Box account hosted by Mr. Gross's law firm. We understand that Mr. Scaramellino has provided his credentials for that account to Stroz Friedberg and provided consent for them to access that storage. Mr. Gross advised us that Mr. Scaramellino was not authorized to provide credentials to that account (raising questions as to exactly when Mr. Scaramellino ceased to be part of the "legal team,"), and taking the position that the Court's Order does not permit Stroz Friedberg to image or preserve that account. Although this position is inconsistent with the Court's November 30 Order, Facebook agreed in principle to Mr. Gross's suggestion that the parties enter into a stipulation

and order clarifying that portions of that account with data relating to this case be imaged and preserved by Stroz Friedberg. Facebook anticipates that such a stipulation will be filed today.

* * *

In view of the apparent deletion of additional information and the ongoing lack of transparency and cooperation by Mr. Kramer, Six4Three, and its legal team, Facebook respectfully requests that the Court consider issuing:

- (1) An order clarifying that the November 30, 2018 Order was intended to authorize Stroz Friedberg to collect and preserve all business or personal email accounts for Messrs. Kramer and Scaramellino, and that Messrs. Kramer and Scaramellino should provide identification of all such accounts and passwords by 5:00 pm Pacific Time on Monday, December 3 and otherwise cooperate with Stroz Friedberg to allow them to access and preserve these email accounts. (Of course, all such data would remain with Stroz Friedberg and would not be shared with Facebook or its counsel until further order of the Court.)
- (2) An order that Six4Three, Mr. Kramer, and Six4Three's "legal team" including Messrs. Gross, Godkin, and Scaramellino work with Stroz Friedberg to take immediate steps to recover the deleted Dropbox ("tom@six4three.com"), including to request reactivation of the account and to request any and all available records or logs of the account from Dropbox. Facebook respectfully suggests that any such order make clear that these steps should be taken *only* in conjunction with Stroz Friedberg and Facebook's outside counsel to ensure that no further evidence is lost or destroyed and that the appropriate protections are in place to preserve the forensic integrity of data relating to the account. (Of course, all such data would remain with Stroz Friedberg and would not be shared with Facebook or its counsel until further order of the Court.)
- (3) An order (pursuant to the parties' anticipated stipulation) clarifying that Stroz Friedberg is authorized to access the Gross & Klein Box account and directing Mr. Gross to cooperate with Stroz Friedberg to allow them to access and preserve all data relating to this matter that is stored on that account.²
- (4) An order that Messrs. Godkin, Gross, Kramer, and Scaramellino appear in person at the hearing scheduled for Friday, December 7.

² Facebook has no interest in any data on this cloud account that relates to Gross & Klein's other clients. Mr. Gross has represented that all materials relating to this matter are on the "Six4Three(Counsel Share-NO CLIENTS)" portion of the share, and, at this point, Facebook has no reason to dispute that representation.

Honorable V. Raymond Swope
December 3, 2018
Page 4

Facebook is of course happy to seek the above relief via *ex parte* application, should the Court permit Facebook to file such a request formally. However, given the urgency of these issues and continued risk of spoliation of evidence, we wanted to bring these matters to Your Honor's attention immediately and seek guidance as to whether the Court authorizes submission of an *ex parte* application.

We thank the Court for its continued time and attention to this matter, especially recognizing the Court's heavy docket.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'S. Mehta', with a long horizontal stroke extending to the right.

Sonal N. Mehta
Counsel for Facebook, Inc.

cc: Counsel of Record

EXHIBIT 4

CIV533328
CMO
Case Management Order
1629200



FILED
SAN MATEO COUNTY

FEB 01 2019

[Signature]
Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., et al.

Defendants.

Case No. CIV533328

CASE MANAGEMENT ORDER NO. 18

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On January 8, 2019, counsel for Plaintiff SIX4THREE, LLC ("Plaintiff" or "Six4Three") Birnbaum & Godkin, LLP, on the one hand, and Stuart Gross and Gross & Klein, LLP, on the other hand, filed separate motions to be relieved as counsel for Six4Three (collectively "Withdraw Motions") set for hearing on February 7, 2019 at 9 a.m.

On January 17, 2019, Defendant FACEBOOK, INC. ("Defendant" or "Facebook") filed a Motion to Seal redacted portions of exhibits to the Declaration of Catherine Y. Kim filed in opposition to the Withdraw Motions ("1/17 Motion to Seal").

On January 24, 2019, the Court, *sua sponte*, continued the hearing on the Withdraw Motions to February 22, 2019 at 9 a.m. (Order, issued Jan. 24, 2019, p. 2:14-27.)

On that same date, Six4Three's CEO and Managing Member Theodore Kramer filed a declaration "regarding plaintiff Six4Three's conditional acceptance of Birnbaum & Godkin and Gross & Klein's motion[s] to be relieved as counsel." ("Kramer Declaration").

On February 1, 2019, Facebook presented an ex parte application seeking leave to file supplemental briefing addressing the Kramer Declaration. Laura Miller and Zachary Abrahamson

1 of Durie Tangri LLP appeared on behalf of Facebook. Laura Grealish of Murphy Pearson Bradley
2 & Feeney appeared on behalf of Birnbaum & Godkin, LLP and specially appeared on behalf of
3 Gross & Klein, LLP. Christopher Sargent of ComputerLaw Group, LLP appeared on behalf of Mr.
4 Kramer and Thomas Scaramellino.

5 At this ex parte, the Court advised the parties that Mr. Kramer and Mr. Scaramellino shall
6 personally appear at the hearing on the Withdraw Motions.

7 IT IS HEREBY ORDERED as follows:

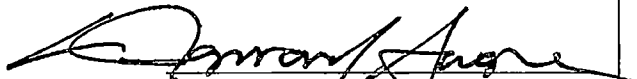
8 All counsel of record and the parties, including Six4Three's CEO and Managing Member
9 Theodore Kramer and non-California licensed attorney Thomas Scaramellino, who is a member of
10 Six4Three's legal team and a law clerk for Plaintiff counsel David S. Godkin, shall appear in person
11 for hearing on Friday, February 22, 2019 at 9 a.m. in Department 23. No telephonic appearances
12 are permitted.

13 Mr. Gross shall bring a copy of the retainer agreement he quoted from verbatim in his
14 declaration to the hearing. (See Gross Dec. ISO Gross & Klein Withdraw Motion, filed Jan. 24,
15 2019, Attachment 2, ¶ 4.)

16 The Court, *sua sponte*, continues Facebook's 1/17 Motion to Seal from February 7, 2019 to
17 March 15, 2019 at 10 a.m.

18
19 IT IS SO ORDERED.

20
21 DATED: February 1, 2019

22
23 
24 Honorable V. Raymond Swope
25 Judge of the Superior Court
26
27
28